

Decision 01-10-044 October 12, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for Authority for Approval of a
Potential Indirect Transfer Control of Americatel
Corporation (U-5918-C) to Pirelli S.p.A.

Application 01-08-026
(Filed August 22, 2001)

O P I N I O N

1. Summary

This application seeks approval under Section 854 of the Public Utilities Code of a transaction that will result in a change of control of Americatel Corporation (Americatel), which provides interexchange telecommunications services in California. The transaction is structured to take effect upon approval by various government entities, including this Commission. The application is unopposed. The application is granted.

2. Description of Applicants

Americatel is a Delaware corporation with its principal business office in Miami, Florida. It was authorized to provide interexchange telecommunications services in California in Decision (D.) 97-12-128. It also is authorized by the Federal Communications Commission to provide domestic interstate and international services as a non-dominant carrier. It is a subsidiary of Bell S.A., a company incorporated under the laws of Luxembourg with its principal offices in Luxembourg.

Bell S.A. itself is not a telecommunications carrier, but currently holds a 21.32% ownership interest in Olivetti S.p.A., which in turn holds a 100% ownership interest in Telecom Italia. Telecom Italia in turn holds a 100% ownership interest in STET International Netherlands N.V. (STET) which, in turn, holds a 54.76% ownership interest in Empresa Nacional de Telecomunicaciones S.A. (ENTEL-Chile). ENTEL-Chile owns a 100% ownership interest in ENTEL International B.V.I. Corporation (Entel BVI), which, in turn, holds an 80% ownership interest in Americatel.

Pirelli S.p.A. (Pirelli), an Italian corporation with its principal offices in Milan, owns and controls the Pirelli Group's operations worldwide. Currently, the Pirelli Group's activities are focused on three core businesses: (1) energy cables and systems; (2) telecommunications cables and systems; and (3) tires. While Pirelli is currently a manufacturer of fiber optic cables, Pirelli is not a provider of telecommunications services and does not own or control any providers of telecommunications services. However, the purpose of Pirelli's proposed acquisition of an indirect interest in Olivetti, which in turn owns a majority of the outstanding voting shares of Telecom Italia, as described above, is to refocus Pirelli's strategy on telecommunications services.

3. Description of Transaction

Pirelli proposes to acquire, through a company jointly owned by Edizione Holding S.p.A. (Edizione Holding), the mentioned interest in Olivetti. Olivetti, in turn, controls Telecom Italia and Telecom Italia's operating subsidiaries, including Americatel.

Applicant believes that if the transaction develops as described in greater detail below and as shown on Appendix A, it may lead to what can be considered an indirect, *de facto* control.

On July 30, 2001, Pirelli and Edizione Holding¹ entered into a purchase agreement with Bell S.A. in which they agreed to purchase Olivetti shares and warrants to be jointly owned by Pirelli and Edizione Holding. On August 3, 2001, Olimpia was formed under the laws of the Republic of Italy for the purpose of acquiring Olivetti shares and warrants. Pirelli has an 80% ownership in Olimpia, with Edizione owning the remaining 20%.

Pursuant to the purchase agreement, Pirelli and Edizione Holding agreed to acquire from Bell S.A., through Olimpia, a combination of Olivetti shares and warrants representing something over 21% of the total number of ordinary shares Olivetti reported outstanding as of August 9, 2001. As a result of all these transactions and corresponding changes in boards of directors of the affected companies, and subject to the provisions of the shareholders agreement, Pirelli could potentially be considered as *de facto* controlling Olivetti, Telecom Italia, and thus Americatel; hence this application for approval.

Applicants state that although the transaction will result in a change in control, it will not involve any change in Americatel or in the manner in which services are provided to Americatel customers. Americatel will continue to operate under its current name, providing service under its existing tariffs. Applicant states that the transfer of control will be transparent to customers and will have no adverse impact upon them.

Exhibits attached to the application describe the transaction in more detail and show that Pirelli will have the financial and technical qualifications necessary to continue the Americatel operations in California.

¹ Edizione Holding S.p.A. is a privately held investment vehicle for members of the Benetton family in Italy.

4. Public Interest

The application states that the transfer of control will serve the public interest as Americatel will become affiliated with an entity (Pirelli) that has the management experience, workforce and means that will strengthen Americatel's ability to bring competitive integrated telecommunications services to customers of the United States. The proposed transaction will allow Americatel to manage its telecommunications operations more efficiently, thereby permitting greater investment in facilities, customer service, and technological innovation. The transaction will result in a company better equipped to accelerate its growth as a competitive telecommunications provider. In addition, the transaction will be consummated in a seamless fashion, will be transparent to customers, and will not be in any way inconvenience or cause harm to any of its customers.

The parties have attached to the application copies of their financial statements, and they have attached a copy of the agreements describing the proposed transfer of control.

5. Discussion

Pub. Util. Code §§ 851-854 require Commission authorization before a company may "merge, acquire, or control . . . any public utility organized and doing business in this state" The purpose of these sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co., (1916) 10 CRC 56.)

The proposed transfer of control here promises improved services for California consumers. No changes in the existing services of Americatel are proposed.

There have been no protests to this application, and the contemplated transfer of control appears to be noncontroversial. The application requests

expedited approval of the application. Expedited approval may be granted by the Executive Director pursuant to authority delegated to him by the Commission to grant “noncontroversial applications for authority to transfer assets or control under [Pub. Util.] Code §§ 851-855” (CAWC, Inc. (1987), D.87-04-017; *see also* D.86-08-057.)

In Resolution ALJ 176-3070, dated September 6, 2001, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3070.

The application is granted, subject to the terms and conditions set forth below.

6. Request for Confidentiality

Applicant requests that the financial information filed with this application be filed under seal. The financial information consists of financial information pertaining to Americatele's balance sheet. Applicant represents that the information is proprietary and sensitive. The information, if revealed, would place Applicant at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of August 24, 2001.
2. Applicants seek approval pursuant to Pub. Util. Code §§ 851-854 of a transaction that will transfer control of Americatele to Pirelli.
3. Americatele is authorized to provide interexchange telecommunications services in California, as well as domestic interstate and international services.

4. There will be no change in name, current services or rates provided by Americatel as a result of the transfer of control.

5. Applicant requests that the financial information filed with the application be kept under seal.

6. Public disclosure of the financial information would place Applicant at an unfair business disadvantage.

Conclusions of Law

1. The proposed transfer of control is not adverse to the public interest.

2. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.

3. The application is noncontroversial and may be granted by the Executive Director pursuant to authority delegated by the Commission.

4. Applicant's request to file its financial information under seal should be granted for two years.

5. The application should be approved.

O R D E R

IT IS ORDERED that:

1. Americatel Corporation (Americatel) and Pirelli S.p.A. (Pirelli) (collectively, Applicants) are authorized pursuant to Section 854 of the Public Utilities Code to enter into the transaction, as more fully described in the application and its exhibits, by which Pirelli will acquire control of Americatel.

2. Applicants shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of authority, as authorized herein, within ten days of the date of consummation of such transfer. A true copy of the instruments of transfer shall be attached to the notification.

3. Americatel shall make all books and records available for review and inspection upon Commission staff request.

4. Applicant's request to have the financial information filed with this application kept under seal is granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

5. If Applicant believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

6. The authority granted herein shall expire if not exercised within one year of the date of this order.

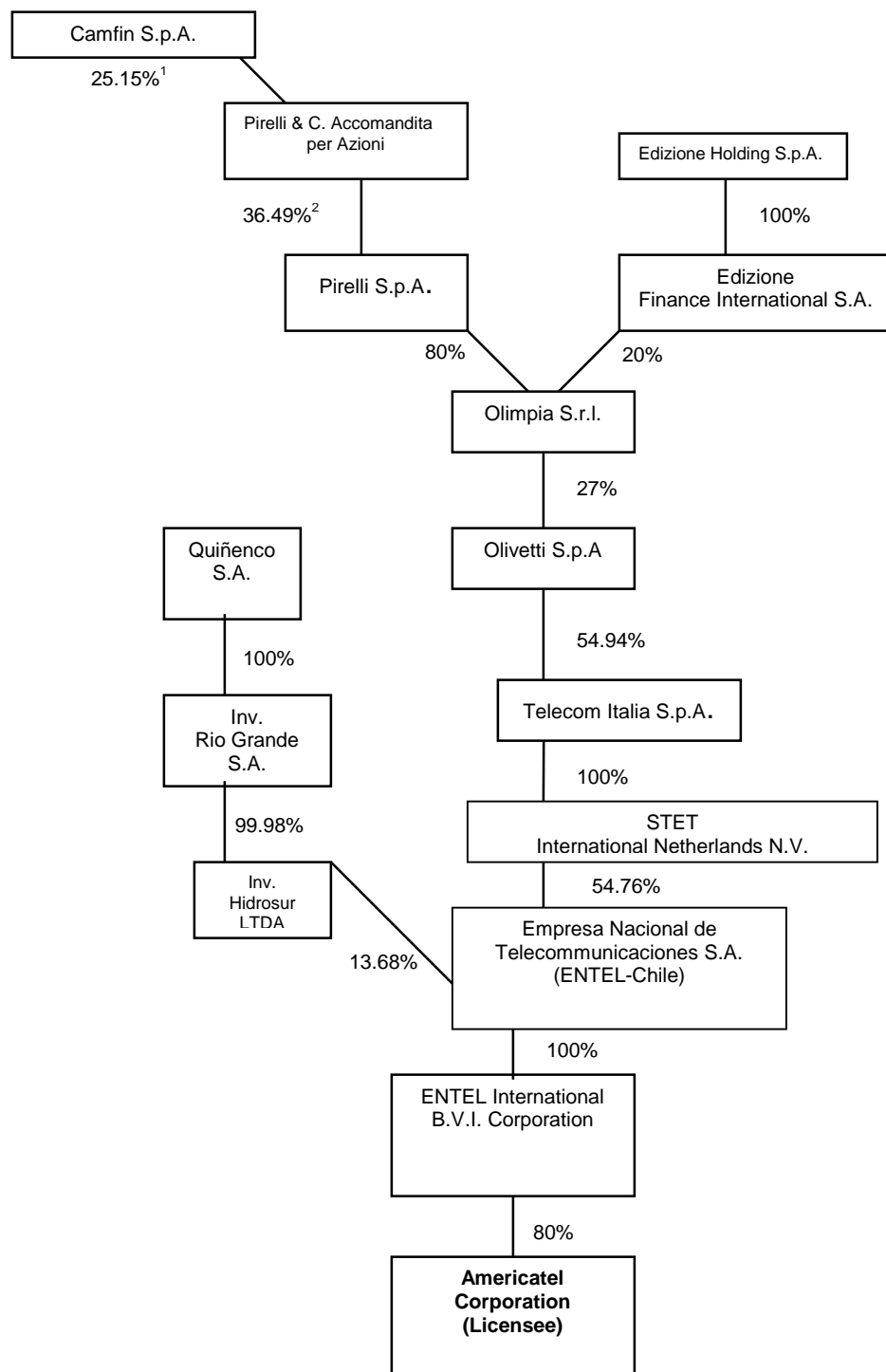
7. Application 01-08-026 is closed.

This order is effective today.

Dated October 12, 2001, at San Francisco, California.

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director

APPENDIX A**EXHIBIT A****Bell/Pirelli Potential Indirect Transfer of Control of
Americatel Corporation
Post-Closing**

¹Camfin S.p.A. is indirectly controlled by Marco Tronchetti Provera, an Italian citizen.

²Approximately 39.8% disregarding Pirelli's ownership of approximately 8.51% of its share capital. Intervening subsidiaries not included.

(END OF APPENDIX A)